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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

19 SILLAGE, LLC,

20 Plaintiff,

21 vs.

22 HISTOIRES DE PARFUMS LLC
23 d/b/a ALICE & PETER, a Delaware
Limited Liability Company;
24 SCENT-SATION LA, a California
Limited Liability Company; and,
P.E., Inc. d/b/a PERFUME
25 EMPORIUM, a California
Corporation,

26 Defendants.

Case No. SACV14-00172 CAS (RNBx)

The Hon. Robert N. Block

[PROPOSED] PROTECTIVE ORDER

Complaint Filed: February 5, 2014

[PROPOSED] PROTECTIVE ORDER

~~[PROPOSED]~~ PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

The parties are in agreement that disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties have stipulated to be bound by the following Protective Order (“Order”) in this action. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 **“CONFIDENTIAL” Information or Items:** information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who (1) has been retained by a Party or its counsel to
7 serve as an expert witness or as a consultant in this action, (2) is not a past or
8 current employee of a Party or of a Party's competitor, and (3) at the time of
9 retention, is not anticipated to become an employee of a Party or of a Party's
10 competitor.

11 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
12 Information or Items: extremely sensitive "Confidential Information or Items,"
13 disclosure of which to another Party or Non-Party would create a substantial risk of
14 serious harm that could not be avoided by less restrictive means.

15 2.9 House Counsel: attorneys who are employees of a party to this action.
16 House Counsel does not include Outside Counsel of Record or any other outside
17 counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association,
19 or other legal entity not named as a Party to this action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a
21 party to this action but are retained to represent or advise a party to this action and
22 have appeared in this action on behalf of that party or are affiliated with a law firm
23 which has appeared on behalf of that party.

24 2.12 Party: any party to this action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
28 Discovery Material in this action.

1 2.14 Professional Vendors: persons or entities that provide litigation
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)
4 and their employees and subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is
6 designated as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
7 ATTORNEYS’ EYES ONLY.”

8 2.16 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10
11 3. SCOPE

12 The protections conferred by this Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected
14 Material; (2) all copies, excerpts, summaries, or compilations of Protected
15 Material; and (3) any testimony, conversations, or presentations by Parties or their
16 Counsel that might reveal Protected Material. However, the protections conferred
17 by this Order do not cover the following information: (a) any information that is in
18 the public domain at the time of disclosure to a Receiving Party or becomes part of
19 the public domain after its disclosure to a Receiving Party as a result of publication
20 not involving a violation of this Order, including becoming part of the public
21 record through trial or otherwise; and (b) any information known to the Receiving
22 Party prior to the disclosure or obtained by the Receiving Party after the disclosure
23 from a source who obtained the information lawfully and under no obligation of
24 confidentiality to the Designating Party. Further, the protections conferred by this
25 Order apply only to Disclosure or Discovery Material and to court filings that
26 might reveal Protected Material, and do not apply to evidence presented at any
27 court hearings or proceedings. Any such use of Protected Material shall be
28 governed by a separate order from the judicial officer conducting the hearing or

1 proceeding, at the appropriate time.

2

3 4. **DURATION**

4 Even after final disposition of this litigation, the confidentiality obligations
5 imposed by this Order shall remain in effect until a Designating Party agrees
6 otherwise in writing or a court order otherwise directs. Final disposition shall be
7 deemed to be the later of (1) dismissal of all claims and defenses in this action,
8 with or without prejudice; and (2) final judgment herein after the completion and
9 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
10 including the time limits for filing any motions or applications for extension of
11 time pursuant to applicable law.

12

13 5. **DESIGNATING PROTECTED MATERIAL**

14 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**
15 Each Party or Non-Party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. To the extent it is practical to do so, the
18 Designating Party must designate for protection only those parts of material,
19 documents, items, or oral or written communications that qualify – so that other
20 portions of the material, documents, items, or communications for which
21 protection is not warranted are not swept unjustifiably within the ambit of this
22 Order.

23 Only Disclosure or Discovery Material containing sensitive business
24 information that is kept confidential in the ordinary course of business, such as (a)
25 financial data, (b) business plans, and (c) trade secrets, whose public disclosure
26 could result in competitive harm to the Producing Party, may properly be
27 designated as “CONFIDENTIAL” under this Order.

28 Only Disclosure or Discovery Material containing extremely sensitive and

1 confidential information and whose disclosure to other parties to this action would
 2 create a substantial risk of serious competitive harm that could not be avoided by
 3 less restrictive means, such as highly confidential competitive business plans, or
 4 certain trade secrets that warrant this heightened protection, may properly be
 5 designated as “**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**”
 6 under this Order.

7 Mass, indiscriminate, or routinized designations are prohibited.
 8 Designations that are shown to be clearly unjustified or that have been made for an
 9 improper purpose (e.g., to unnecessarily encumber or retard the case development
 10 process or to impose unnecessary expenses and burdens on other parties) expose
 11 the Designating Party to sanctions.

12 If it comes to a Designating Party’s attention that information or items that it
 13 designated for protection do not qualify for protection at all or do not qualify for
 14 the level of protection initially asserted, that Designating Party must promptly
 15 notify all other Parties, in writing, that it is withdrawing the mistaken designation.

16 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
 17 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
 18 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
 19 under this Order must be clearly so designated before the material is disclosed or
 20 produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
 23 documents, but excluding transcripts of depositions or other pretrial or trial
 24 proceedings), that the Producing Party affix the legend “CONFIDENTIAL,” or
 25 “**HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**” to each page that
 26 contains protected material. If only a portion or portions of the material on a page
 27 qualifies for protection, the Producing Party also must clearly identify the
 28 protected portion(s) (e.g., by making appropriate markings in the margins) and

1 must specify, for each portion, the level of protection being asserted.

2 A Party or Non-Party that makes original documents or materials available
 3 for inspection need not designate them for protection until after the inspecting
 4 Party has indicated which material it would like copied and produced. During the
 5 inspection and before the designation, all of the material made available for
 6 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 7 ONLY.” After the inspecting Party has identified the documents it wants copied
 8 and produced, the Producing Party must determine which documents, or portions
 9 thereof, qualify for protection under this Order. Then, before producing the
 10 specified documents, the Producing Party must affix the appropriate legend
 11 (“CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 12 ONLY”) to each page that contains Protected Material. If only a portion or
 13 portions of the material on a page qualifies for protection, the Producing Party also
 14 must clearly identify the protected portion(s) (e.g., by making appropriate
 15 markings in the margins) and must specify, for each portion, the level of protection
 16 being asserted.

17 (b) for testimony given in deposition, that the Designating Party identify on
 18 the record, before the close of the deposition, all protected testimony and specify
 19 the level of protection being asserted. When it is impractical to identify separately
 20 each portion of testimony that is entitled to protection and it appears that
 21 substantial portions of the testimony may qualify for protection, the Designating
 22 Party may invoke on the record (before the deposition is concluded) a right to have
 23 up to 30 days to identify the specific portions of the testimony as to which
 24 protection is sought and to specify the level of protection being asserted. Only
 25 those portions of the testimony that are appropriately designated for protection
 26 within the 30 days shall be covered by the provisions of this Order. Alternatively,
 27 a Designating Party may specify, at the deposition or up to 30 days afterwards if
 28 that period is properly invoked, that the entire transcript shall be treated as

1 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 2 ONLY."

3 Transcripts containing Protected Material shall have an obvious legend on
 4 the title page that the transcript contains Protected Material, and the title page shall
 5 be followed by a list of all pages (including line numbers as appropriate) that have
 6 been designated as Protected Material and the level of protection being asserted by
 7 the Designating Party. The Designating Party shall inform the court reporter of
 8 these requirements. Any transcript that is prepared before the expiration of a 30-
 9 day period for designation shall be treated during that period as if it had been
 10 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its
 11 entirety unless otherwise agreed. After the expiration of that period, the transcript
 12 shall be treated only as actually designated.

13 (c) for information produced in some form other than documentary and for
 14 any other tangible items, that the Producing Party affix in a prominent place on the
 15 exterior of the container or containers in which the information or item is stored
 16 the legend "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL – ATTORNEYS'
 17 EYES ONLY." If only a portion or portions of the information or item warrant
 18 protection, the Producing Party, to the extent practicable, shall identify the
 19 protected portion(s) and specify the level of protection being asserted.

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 21 failure to designate qualified information or items does not, standing alone, waive
 22 the Designating Party's right to secure protection under this Order for such
 23 material. Upon timely correction of a designation, the Receiving Party must make
 24 reasonable efforts to assure that the material is treated in accordance with the
 25 provisions of this Order.

26
 27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a

1 designation of confidentiality at any time. Unless a prompt challenge to a
2 Designating Party's confidentiality designation is necessary to avoid foreseeable,
3 substantial unfairness, unnecessary economic burdens, or a significant disruption
4 or delay of the litigation, a Party does not waive its right to challenge a
5 confidentiality designation by electing not to mount a challenge promptly after the
6 original designation is disclosed.

7 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
8 resolution process by providing written notice of each designation it is challenging
9 and describing the basis for each challenge. To avoid ambiguity as to whether a
10 challenge has been made, the written notice must recite that the challenge to
11 confidentiality is being made in accordance with this specific paragraph of the
12 Order. The parties shall attempt to resolve each challenge in good faith and must
13 begin the process by conferring directly (in voice to voice dialogue; other forms of
14 communication are not sufficient) within 14 days of the date of service of notice.
15 In conferring, the Challenging Party must explain the basis for its belief that the
16 confidentiality designation was not proper and must give the Designating Party an
17 opportunity to review the designated material, to reconsider the circumstances,
18 and, if no change in designation is offered, to explain the basis for the chosen
19 designation. A Challenging Party may proceed to the next stage of the challenge
20 process only if it has engaged in this meet and confer process first or establishes
21 that the Designating Party is unwilling to participate in the meet and confer process
22 in a timely manner.

23 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
24 Court intervention, the Challenging Party shall file and serve a motion to challenge
25 a confidentiality designation within 30 days of the initial notice of challenge or
26 within 14 days of the parties agreeing that the meet and confer process will not
27 resolve their dispute, whichever is later. Each such motion must be accompanied
28 by a competent declaration affirming that the movant has complied with the meet

1 and confer requirements imposed in the preceding paragraph. Any such motion
 2 must be made in strict compliance with Local Rules 37-1 and 37-2 (including the
 3 joint stipulation requirement).

4 The burden of persuasion in any such challenge proceeding shall be on the
 5 Designating Party. Frivolous challenges and those made for an improper purpose
 6 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 7 expose the Challenging Party to sanctions. All parties shall continue to afford the
 8 material in question the level of protection to which it is entitled under the
 9 Producing Party's designation until the Court rules on the challenge.

10

11 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 **Basic Principles.** A Receiving Party may use Protected Material that
 13 is disclosed or produced by another Party or by a Non-Party in connection with this
 14 case only for prosecuting, defending, or attempting to settle this litigation. Such
 15 Protected Material may be disclosed only to the categories of persons and under
 16 the conditions described in this Order. When the litigation has been terminated, a
 17 Receiving Party must comply with the provisions of section 14 below (FINAL
 18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
 20 location and in a secure manner that ensures that access is limited to the persons
 21 authorized under this Order.

22 7.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless
 23 otherwise ordered by the Court or permitted in writing by the Designating Party, a
 24 Receiving Party may disclose any information or item designated
 25 “CONFIDENTIAL” only to:

26 (a) the Receiving Party's Outside Counsel of Record in this action, as
 27 well as employees of said Outside Counsel of Record to whom it is reasonably
 28 necessary to disclose the information for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A;

3 (b) the officers, directors, and employees (including House Counsel) of
4 the Receiving Party to whom disclosure is reasonably necessary for this litigation
5 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
6 A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants,
12 and Professional Vendors to whom disclosure is reasonably necessary for this
13 litigation and who have signed the “Acknowledgment and Agreement to Be
14 Bound” (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is
16 reasonably necessary and who have signed the “Acknowledgment and Agreement
17 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
18 ordered by the Court. Pages of transcribed deposition testimony or exhibits to
19 depositions that reveal Protected Material must be separately bound by the court
20 reporter and may not be disclosed to anyone except as permitted under this Order.

21 (g) the author or recipient of a document containing the information or a
22 custodian or other person who otherwise possessed or knew the information.

23 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
24 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted
25 in writing by the Designating Party, a Receiving Party may disclose any
26 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” only to:

28 (a) the Receiving Party’s Outside Counsel of Record in this action, as

1 well as employees of said Outside Counsel of Record to whom it is reasonably
2 necessary to disclose the information for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
4 A;

5 (b) Designated House Counsel of the Receiving Party (1) who has no
6 involvement in competitive decision-making, (2) to whom disclosure is reasonably
7 necessary for this litigation, (3) who has signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth
9 in paragraph 7.4(a)(1), below, have been followed;

10 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
11 necessary for this litigation, (2) who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth
13 in paragraph 7.4(a)(2), below, have been followed;

14 (d) the Court and its personnel;

15 (e) court reporters and their staff, professional jury or trial consultants,
16 and Professional Vendors to whom disclosure is reasonably necessary for this
17 litigation and who have signed the “Acknowledgment and Agreement to Be
18 Bound” (Exhibit A); and

19 (f) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

21 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
23 Designated House Counsel or Experts.

24 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by
25 the Designating Party, a Party that seeks to disclose to Designated House Counsel
26 any information or item that has been designated “HIGHLY CONFIDENTIAL –
27 ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first must make a
28 written request to the Designating Party that (1) sets forth the full name of the

1 Designated House Counsel and the city and state of his or her residence and (2)
 2 describes the Designated House Counsel's current and reasonably foreseeable
 3 future primary job duties and responsibilities in sufficient detail to determine if
 4 House Counsel is involved, or may become involved, in any competitive decision-
 5 making.

6 (a)(2) Unless otherwise ordered by the Court or agreed to in writing by
 7 the Designating Party, a Party that seeks to disclose to an Expert (as defined in this
 8 Order) any information or item that has been designated "HIGHLY
 9 CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c)
 10 first must make a written request to the Designating Party that (1) identifies the
 11 general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 12 ONLY" information that the Receiving Party seeks permission to disclose to the
 13 Expert, (2) sets forth the full name of the Expert and the city and state of his or her
 14 primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies
 15 the Expert's current employer(s), (5) identifies each person or entity from whom
 16 the Expert has received compensation or funding for work in his or her areas of
 17 expertise or to whom the expert has provided professional services, including in
 18 connection with a litigation, at any time during the preceding five years,¹ and (6)
 19 identifies (by name and number of the case, filing date, and location of court) any
 20 litigation in connection with which the Expert has offered expert testimony,
 21 including through a declaration, report, or testimony at a deposition or trial, during
 22 the preceding five years.

23 (b) A Party that makes a request and provides the information specified
 24 in the preceding respective paragraphs may disclose the subject Protected Material
 25 to the identified Designated House Counsel or Expert unless, within 14 days of

26 ¹ If the Expert believes any of this information is subject to a confidentiality
 27 obligation to a third-party, then the Expert should provide whatever information
 28 the Expert believes can be disclosed without violating any confidentiality
 agreements, and the Party seeking to disclose to the Expert shall be available to
 meet and confer with the Designating Party regarding any such engagement.

1 delivering the request, the Party receives a written objection from the Designating
 2 Party. Any such objection must set forth in detail the grounds on which it is based.

3 (c) A Party that receives a timely written objection must meet and confer
 4 with the Designating Party (through direct voice to voice dialogue) to try to resolve
 5 the matter by agreement within seven days of the written objection. If no
 6 agreement is reached, the Party seeking to make the disclosure to Designated
 7 House Counsel or the Expert may file a motion seeking permission from the Court
 8 to do so. Any such motion must describe the circumstances with specificity, set
 9 forth in detail the reasons why disclosure to Designated House Counsel or the
 10 Expert is reasonably necessary, assess the risk of harm that the disclosure would
 11 entail, and suggest any additional means that could be used to reduce that risk. In
 12 addition, any such motion must be accompanied by a competent declaration
 13 describing the parties' efforts to resolve the matter by agreement (i.e., the extent
 14 and the content of the meet and confer discussions) and setting forth the reasons
 15 advanced by the Designating Party for its refusal to approve the disclosure.
 16 Additionally, any such motion must be made in strict compliance with Local Rules
 17 37-1 and 37-2 (including the joint stipulation requirement).

18 In any such proceeding, the Party opposing disclosure to Designated
 19 House Counsel or the Expert shall bear the burden of proving that the risk of harm
 20 that the disclosure would entail (under the safeguards proposed) outweighs the
 21 Receiving Party's need to disclose the Protected Material to its Designated House
 22 Counsel or Expert.

23
 24 8. **PROSECUTION BAR**

25 Absent written consent from the Producing Party, any individual who
 26 receives access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
 27 information shall not be involved in the prosecution of patents or patent
 28 applications relating to the design of merchandise bottling or packaging, including

1 without limitation the patents asserted in this action and any patent or application
 2 claiming priority to or otherwise related to the patents asserted in this action,
 3 before any foreign or domestic agency, including the United States Patent and
 4 Trademark Office (“the Patent Office”). For purposes of this paragraph,
 5 “prosecution” includes directly or indirectly drafting, amending, advising, or
 6 otherwise affecting the scope or maintenance of patent claims.² To avoid any
 7 doubt, “prosecution” as used in this paragraph does not include representing a
 8 party challenging a patent before a domestic or foreign agency (including, but not
 9 limited to, a reissue protest, *ex parte* reexamination or *inter partes* reexamination).
 10 This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL –
 11 ATTORNEYS’ EYES ONLY” information is first received by the affected
 12 individual and shall end two (2) years after final termination of this action.

13

14 9. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
 15 **IN OTHER LITIGATION**

16 If a Party is served with a subpoena or a court order issued in other litigation
 17 that compels disclosure of any information or items designated in this action as
 18 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 19 ONLY” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification
 21 shall include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order
 23 to issue in the other litigation that some or all of the material covered by the
 24 subpoena or order is subject to this Order. Such notification shall include a copy
 25 of this Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be

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28 ² Prosecution includes, for example, original prosecution, reissue and
 reexamination proceedings.

1 pursued by the Designating Party whose Protected Material may be affected.³

2 The Designating Party shall bear the burden and expense of seeking
 3 protection in that court of its confidential material – and nothing in these
 4 provisions should be construed as authorizing or encouraging a Receiving Party in
 5 this action to disobey a lawful subpoena issued in another action.

6

7 10. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
 8 **PRODUCED IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a
 10 Non-Party in this action and designated as “CONFIDENTIAL,” or “HIGHLY
 11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced
 12 by Non-Parties in connection with this litigation is protected by the remedies and
 13 relief provided by this Order. Nothing in these provisions should be construed as
 14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
 16 produce a Non-Party’s confidential information in its possession, and the Party is
 17 subject to an agreement with the Non-Party not to produce the Non-Party’s
 18 confidential information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-
 20 Party that some or all of the information requested is subject to a confidentiality
 21 agreement with a Non-Party;

22 2. promptly provide the Non-Party with a copy of the Order in this
 23 litigation, the relevant discovery request(s), and a reasonably specific description
 24 of the information requested; and

25 3. make the information requested available for inspection by the

26

27 ³ The purpose of imposing these duties is to alert the interested parties to the
 28 existence of this Order and to afford the Designating Party in this case an
 opportunity to try to protect its confidentiality interests in the court from which the
 subpoena or order issued.

1 Non-Party.

2 (c) If the Non-Party fails to object or seek a protective order from this
3 Court within 14 days of receiving the notice and accompanying information, the
4 Receiving Party may produce the Non-Party's confidential information responsive
5 to the discovery request. If the Non-Party timely seeks a protective order, the
6 Receiving Party shall not produce any information in its possession or control that
7 is subject to the confidentiality agreement with the Non-Party before a
8 determination by the Court.⁴ Absent a court order to the contrary, the Non-Party
9 shall bear the burden and expense of seeking protection in this Court of its
10 Protected Material.

11

12 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a Receiving Party learns that, by inadvertence or otherwise, it has
14 disclosed Protected Material to any person or in any circumstance not authorized
15 under this Order, the Receiving Party must immediately (a) notify in writing the
16 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
17 all unauthorized copies of the Protected Material, (c) inform the person or persons
18 to whom unauthorized disclosures were made of all the terms of this Order, and (d)
19 request such person or persons to execute the "Acknowledgment and Agreement to
20 Be Bound" that is attached hereto as Exhibit A.

21

22 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
PROTECTED MATERIAL

23 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other

25

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28 ⁴ The purpose of this provision is to alert the interested parties to the existence of
 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to
 protect its confidentiality interests in this Court.

1 protection, the obligations of the Receiving Parties are those set forth in Federal
 2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
 3 whatever procedure may be established in an e-discovery order that provides for
 4 production without prior privilege review. Pursuant to Federal Rule of Evidence
 5 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
 6 of a communication or information covered by the attorney-client privilege or
 7 work product protection, the parties may incorporate their agreement in the Order.

8

9 13. **MISCELLANEOUS**

10 13.1 **Right to Further Relief**. Nothing in this Order abridges the right of
 11 any person to seek its modification by the Court in the future.

12 13.2 **Right to Assert Other Objections**. No Party waives any right it
 13 otherwise would have to object to disclosing or producing any information or item
 14 on any ground not addressed in this Order. Similarly, no Party waives any right to
 15 object on any ground to use in evidence of any of the material covered by this
 16 Order.

17 13.3 **Export Control**. Disclosure of Protected Material shall be subject to
 18 all applicable laws and regulations relating to the export of technical data
 19 contained in such Protected Material, including the release of such technical data to
 20 foreign persons or nationals in the United States or elsewhere. The Producing
 21 Party shall be responsible for identifying any such controlled technical data, and
 22 the Receiving Party shall take measures necessary to ensure compliance.

23 13.4 **Filing Protected Material**. In accordance with Local Rule 79-5.1, if
 24 any papers to be filed with the Court contain information and/or documents that
 25 have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 26 ATTORNEYS’ EYES ONLY,” the proposed filing shall be accompanied by an
 27 application to file the papers or the portion thereof containing the designated
 28 information or documents (if such portion is segregable) under seal; and the

1 application shall be directed to the judge to whom the papers are directed. For
2 motions, the parties shall publically file a redacted version of the motion and
3 supporting papers.

4

5 **14. FINAL DISPOSITION**

6 Within 60 days after the final disposition of this action, as defined in
7 paragraph 4, each Receiving Party must return all Protected Material to the
8 Producing Party or destroy such material. As used in this subdivision, “all
9 Protected Material” includes all copies, abstracts, compilations, summaries, and
10 any other format reproducing or capturing any of the Protected Material. Whether
11 the Protected Material is returned or destroyed, the Receiving Party must submit a
12 written certification to the Producing Party (and, if not the same person or entity, to
13 the Designating Party) by the 60 day deadline that (1) identifies (by category,
14 where appropriate) all the Protected Material that was returned or destroyed and
15 (2) affirms that the Receiving Party has not retained any copies, abstracts,
16 compilations, summaries or any other format reproducing or capturing any of the
17 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
18 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
20 reports, attorney work product, and consultant and expert work product, even if
21 such materials contain Protected Material. Any such archival copies that contain
22 or constitute Protected Material remain subject to this Order as set forth in Section
23 4 (DURATION).

24

IT IS SO ORDERED.

25

DATED: June 30, 2014

26



Honorable Robert N. Block
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address],
hereunder penalty of perjury that I have read in its entirety and understand the
Executive Order (“Order”) that was issued by the United States District Court for
Central District of California on _____ [date] in the case of *Sillage, LLC v.*
Chanel, S.A. et al., Case No. 8:14-cv-00172-CAS-RNB. I agree to
comply with and to be bound by all the terms of this Order, and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Order to any person or
entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District
15 Court for the Central District of California for the purpose of enforcing the terms
16 of this Order, even if such enforcement proceedings occur after termination of this
17 action.

18 I hereby appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 || Signature:

CERTIFICATE OF SERVICE

I certify that on June 27, 2014 the foregoing document(s)

[PROPOSED] PROTECTIVE ORDER

was/were served on all parties or their counsel of record by United States mail by serving a true and correct copy at the addresses listed below:

Kevin W. Isaacson
(kisaacson@tingleylawgroup.com)
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San Jose, CA 95113
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*Attorneys for Defendant
MOSHE, INC. erroneously sued as
SCENT-SATION LA*

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fax: 213-624-3755

*Attorneys for Defendant
PERFUME EMPORIUM, INC.,
erroneously sued as P.E., Inc.*

Date: June 27, 2014

/s/ Thomas J. Speiss, III

Thomas J. Speiss, III